

**In re: CAPTAIN JACK'S TOMATOES, INC., AND THE FRESH GROUP,  
LTD., d/b/a MAGLIO AND COMPANY.  
PACA Docket No. D-00-0008.  
Stay Order as to The Fresh Group, Ltd., d/b/a Maglio and Company.  
Filed July 16, 2002.**

Ruben D. Rudolph, Jr., for Complainant.  
Jordan B. Reich, for Respondent.  
*Order issued by William G. Jenson, Judicial Officer.*

On April 30, 2002, I issued a Decision and Order as to The Fresh Group, Ltd., d/b/a Maglio and Company: (1) concluding that beginning on December 7, 1998, and continuing through December 29, 1998, The Fresh Group, Ltd., d/b/a Maglio and Company [hereinafter Respondent], committed willful, flagrant, and repeated violations of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a-499s) [hereinafter the PACA], by failing to pay promptly for 11 lots of perishable agricultural commodities which Captain Jack's Tomatoes, Inc., purchased, received, and accepted in interstate commerce; (2) assessing Respondent a \$150,000 civil penalty; and (3) stating that in the event the \$150,000 civil penalty is not paid in accordance with the April 30, 2002, Order, Respondent's PACA license shall be suspended for 60 days. *In re Captain Jack's Tomatoes, Inc. (Decision as to The Fresh Group, Ltd., d/b/a Maglio and Company)*, 61 Agric. Dec. 356 (2002).

On July 1, 2002, Respondent filed "Motion to Stay Order of Judicial Officer, United States Department of Agriculture Pending Review of Decision and Order" [hereinafter Motion for Stay] requesting a stay of the Order in *In re Captain Jack's Tomatoes, Inc. (Decision as to The Fresh Group, Ltd., d/b/a Maglio and Company)*, 61 Agric. Dec. 356 (2002), pending the outcome of proceedings for judicial review. On July 15, 2002, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Respondent's Motion for Stay.

On July 16, 2002, Ruben D. Rudolph, Jr., counsel for the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Complainant], contacted the Office of the Judicial Officer by telephone and stated that Complainant does not object to Respondent's Motion for Stay.

Respondent appealed *In re Captain Jack's Tomatoes, Inc. (Decision as to The Fresh Group, Ltd., d/b/a Maglio and Company)*, 61 Agric. Dec. 356 (2002), to the United States Court of Appeals for the Seventh Circuit.<sup>1</sup> Therefore, in accordance with 5 U.S.C. § 705, Respondent's Motion for Stay is granted.

For the foregoing reasons, the following Order should be issued.

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<sup>1</sup>*The Fresh Group, Ltd. v. United States Dep't of Agric.*, appeal docketed, No. 02-2636 (7th Cir. June 24, 2002).

## **ORDER**

The Order issued in *In re Captain Jack's Tomatoes, Inc. (Decision as to The Fresh Group, Ltd., d/b/a Maglio and Company)*, 61 Agric. Dec. 356 (2002), is stayed pending the outcome of proceedings for judicial review. This Stay Order as to The Fresh Group, Ltd., d/b/a Maglio and Company, shall remain in effect until it is lifted by the Judicial Officer or vacated by a court of competent jurisdiction.

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